

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's Own Motion into the Operations and Practices of the Conlin-Strawberry Water Co. Inc. (U-177-W), and its Owner/Operator, Danny T. Conlin; Notice of Opportunity for Hearing; and Order to Show Cause Why the Commission Should Not Petition the Superior Court for a Receiver to Assume Possession and Operation of the Conlin-Strawberry Water Co. Inc. pursuant to the California Public Utilities Code Section 855.

**FILED**  
**PUBLIC UTILITIES COMMISSION**  
**OCTOBER 16, 2003**  
**SAN FRANCISCO OFFICE**  
**L03-10-038**

**ORDER INSTITUTING INVESTIGATION, NOTICE OF OPPORTUNITY FOR HEARING AND ORDER TO SHOW CAUSE WHY THE COMMISSION SHOULD NOT PETITION THE SUPERIOR COURT FOR A RECEIVER TO ASSUME POSSESSION AND OPERATION OF THE CONLIN-STRAWBERRY WATER CO. INC.; ADJUDGE ALLEGATIONS OF CONTINUING AND/OR NEW VIOLATIONS; AND IMPOSE APPROPRIATE FINES AND PENALTIES.**

**I. INTRODUCTION**

In this Order Instituting Investigation, Notice of Opportunity for Hearing, and Order to Show Cause, the Commission will hold an evidentiary hearing pursuant to the California Public Utilities Code section 855<sup>1</sup> to determine:

1. Whether the Conlin-Strawberry Water Co. Inc. (CSWC) and/or its owner/operator, Danny T. Conlin, either jointly or severally,<sup>2</sup> are unable or unwilling to adequately serve their ratepayers; have actually or effectively abandoned the

<sup>1</sup> The term "Section" means a provision of the California Public Utilities Code, unless otherwise indicated.

<sup>2</sup> "Respondents" means collectively CSWC and Danny T. Conlin, which for purposes of this proceeding are regarded as one and the same person.

water system; or are unresponsive to the rules or orders of the Commission;

2. Whether the Commission should petition the Tuolumne County Superior Court for appointment of a receiver to assume possession and operation of CSWC and its water system pursuant to the California Public Utilities Code section 855; and
3. Whether any fines or penalties should be imposed on the Respondents for failing to comply with Commission orders, resolutions, or other directions of the Commission.

As explained below, this proceeding implements Ordering Paragraph 3 of Resolution (Res.) W-4207 as modified. That Order provides that if the Water Division reports the Respondents have failed to timely comply with all the requirements of Res. W-4207, the Commission will issue an Order to Show Cause why the Commission should not apply to the Tuolumne County Superior Court for an appointment of a receiver to assume possession and operation of CSWC and its water system.<sup>3</sup>

According to the Commission's recent 2003 Water Division Report,<sup>4</sup> the Respondents have failed to comply with two Commission orders issued by Res. W-4207. Those orders require that as of September 30, 2000, the Respondents must (i) replace Respondent Danny Conlin with a qualified system operator and/or manager; and (ii) develop and file an engineering study of system improvements. Despite the Commission's admonishment in Res. W-4207 that "[t]he items not completed are serious and should not be ignored by either the Commission or the Company," the Respondents have not yet complied with these two orders.<sup>5</sup>

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<sup>3</sup> See, *Applic. of Conlin-Strawberry Water Co. Inc. for Rehrgr. of Res. W-4207 and Petn. for Modification of Res. W-4207*, D. 00-11-043, 2000 Cal. PUC LEXIS 931 at \*10 (November 21, 2000), modifying Ordering Para. 3 in *Res. W-4207*, 2000 Cal. PUC LEXIS 616 at \*9 (July 20, 2000).

<sup>4</sup> See, Water Div., CPUC, *Water Division Report for CSWC as of September 2003*, attached hereto as Exhibit 1 (*Water Div. Rpt 2003*) and incorporated by reference as if fully stated here.

<sup>5</sup> See, Findings and Recommendations Paras. 2 and 5(g) - (h) in *Res. W-4207*, 2000 Cal. PUC LEXIS 616 at \*8 - \*9.

The Respondents' failure to respond to an electrical outage in their service area during December of 2002, illustrates that the Respondents have been continuously in violation of a Commission order for two decades. In 1983, the Commission ordered the Respondents to install an answering machine or hire an answering service to receive telephone messages from the ratepayers.<sup>6</sup> Nearly 19 years later, when an electricity outage occurred on or about December 16, 2002, the Respondents still were out of compliance with the 1983 Commission order. When ratepayers and DHS officials telephoned the Respondents to report they had no water, they found no answering machine or service was available to record their urgent telephone messages. Many of the Respondents' ratepayers had no water service for days. After being unable to reach the Respondents by telephone, DHS decided to publish a safety warning in the local newspaper to ratepayers to boil their drinking water, which had become impotable because of the outage.<sup>7</sup>

In the 2003 audits of the Respondents, the Water Division discovered the Respondents had apparently misappropriated more than \$113,000 of Safe Drinking Water Bond Law (SDWBL) loan funds earmarked for water system improvements.<sup>8</sup> Also missing and unaccounted for are over \$103,000 in SDWBL surcharges (including accruable interests) that were billed to and collected from ratepayers for repayment of the SDWBL loans.<sup>9</sup> The Respondents never deposited the collected surcharges into the SDWBL

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<sup>6</sup> See, Ordering Para. 2(c) in *Applic. of Colin-Strawberry Water Co. for General Rate Relief and for Authority to Borrow Funds under the Safe Drinking Water Bond Law and to Add a Surcharge to WATER Rates*, D.83-05-052, 1983 Cal. PUC LEXIS 916 at \*35- \*36, 11 CPUC2d 5410 (May 18, 1983), which states: "[CSWC]. shall undertake the following measures to improve service, under the following schedule . . . Use of telephone answering device or answering service: 30 days from the date of this order ."

<sup>7</sup> See e.g., Ex. 1, *Water Div. Rpt 2003* at p. 16.

<sup>8</sup> While Commission and Staff documents refer to the "Safe Drinking Water Bond Act," the official statutory title is the "Safe Drinking Water Bond Law of 1976," according to California Water Code sec. 13850 (LEXIS through 2003 legislation). Apparently, all the SDWBL loan funds in question were advanced to the Respondents under the 1976 enactment.

<sup>9</sup> According to the Water Division Audit Report dated 18 September 2003, attached hereto as Exhibit 2 (Audit Report) and incorporated by reference as if fully stated here, at p. 2: "\$61,714.91 is the surcharge revenues collected but not deposited and \$41,553.67 is accruable interest on those revenues."

Trust Account as required by law. Not only is this misappropriation of funds contrary to Commission requirements, it also violates applicable state water law<sup>10</sup>

## II. BACKGROUND

CSWC is a Class D public water utility located in an unincorporated portion of Tuolumne County near the town of Strawberry, California, approximately 30 miles northeast of Sonora, California. The service area consists of 9 square miles and contains 366 service connections tariffed at fixed or metered rates. CSWC furnishes domestic water to the Strawberry subdivision (406 lots, 284 or more of which are improved and receiving water service) and Dymond's Strawberry Ridge subdivision (103 lots, 45 or more of which are improved and receiving service). Both areas are near State Highway 108 and the Sonora-Mono Highway. The population fluctuates from approximately 165 permanent residents to over 1,000 seasonal visitors because of the winter ski resorts and summer campgrounds in the vicinity.

Danny Conlin has operated the company and water system since 1963. After inheriting sole ownership of CSWC in 1981, he applied for Commission approval to transfer his ownership to a newly formed California corporation, the Conlin-Strawberry Water Co. Inc. The Commission approved and granted this application in 1983.<sup>11</sup> Danny Conlin is CSWC's sole director, officer, and shareholder.

In 1983 and 1986, the Commission authorized the Respondents to borrow for system improvements \$ 411,200 and \$51,500, respectively, under the Safe Drinking Water Bond Law of 1976 (SDWBL). The SDWBL loan program is administered by the California Department of Water Resources (DWR). The Respondents were also authorized to collect a surcharge from ratepayers for repayment of the SDWBL loans, which had to be deposited into the SDWBL Trust Account.<sup>12</sup>

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<sup>10</sup> See, California Water Code section 13850 *et seq.* (LEXIS through 2003 legislation).

<sup>11</sup> See, *Applic. of Danny Conlin, Executor of the Estate of Miriam E. Conlin, dba Strawberry Water Co.* D. 83-03-007, 1983 Cal. PUC LEXIS 624.

<sup>12</sup> See, Ordering Para. 10, *Applic. of Colin-Strawberry Water Co. for general rate relief -- In the matter of*

### III. FACTS

#### A. The Commission order to hire a new system and/or operator.

In Ordering Paragraph 2 of D.96-09-043, the Commission first ordered the Respondents to hire a new system manager and/or operator, as follows:

Within sixty (60) days after the effective date of this order [i.e., on or about November 4, 1996], defendant, Conlin-Strawberry Water Company, shall hire a qualified system operator or manager who is qualified and willing to abide by prior Commission and DHS orders discussed in this decision. The Commission Staff must approve the new system operator or manager selected.<sup>13</sup>

In 1997, the Commission subsequently restated its powers and confirmed the need to replace Danny Conlin, stating:

[W]e have the power to order a utility to hire qualified personnel, and to order the replacement of nominally qualified personnel who are not performing adequately, even where such actions essentially substitute for the judgment of utility management. We did not err in ordering Conlin-Strawberry to replace a manager we lack confidence in with a qualified manager or operator.<sup>14</sup>

In November 1999, the Commission directed the Water Division to report in a compliance verification resolution inter alia whether by April 30, 2000, the Respondents had hired a qualified system operator and/or manager to replace Danny Conlin.<sup>15</sup>

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D. 83-05-052, 1983 Cal. PUC LEXIS 916 at \*37 - \*38; Ordering Para. 2, *Applic. of Conlin Strawberry Water Co. Inc. to Borrow Funds under the Safe Drinking Water Bond Law and to Add a Surcharge to Water Rates*, D. 86-11-004, 1986 Cal. PUC LEXIS 670 at \*5, 22 CPUC2d 292 (November 5, 1986).

<sup>13</sup> See, Ordering Para. 2, *Strawberry Property Owners Association, Complainant vs. Conlin-Strawberry Water Co. Inc., Defendant*, D. 96-09-043, 1996 Cal. PUC LEXIS 910 at \*43 - \*44, 68 CPUC2d 52 (September 4, 1996[0])(interim decision).

<sup>14</sup> *Strawberry Property Owners Association, Complainant, vs. Conlin-Strawberry Water Co. Inc., Defendant*, D. 97-10-032, 1997 Cal. PUC LEXIS 954 at \*15; 76 CPUC2d 46 (October 9, 1997).

<sup>15</sup> *Strawberry Property Owners Association, Complainant, vs. Conlin-Strawberry Water Co. Inc., Defendant*, D. 99-11-044, 1999 Cal. PUC LEXIS 875 at \*34, Ordering Para. 8 (November 18, 1999).

In July 2000, the Water Division reported that the Respondents had not replaced Danny Conlin with a new system operator and/or manager by April 30, 2000, pursuant to D. 99-11-044 and D. 96-09-043<sup>16</sup> In response, the Commission ordered that by September 30, 2000, the Respondents had to comply with all the items listed in Res. W-4207, Findings and Recommendations Paragraph 5, which included replacing Danny Conlin with a “New System Manager approved by the Commission.”<sup>17</sup> The Commission warned, “[t]he items not completed are serious and should not be ignored by either the Commission or the Company.”<sup>18</sup> In November 2000, the Commission reaffirmed Res. W-4207’s order to replace Danny Conlin with a new qualified system operator and/or manager.<sup>19</sup> As of September 2003, the Respondents still have failed to comply with this order.<sup>20</sup>

**B. The Commission order to develop and file an engineering plan to improve the water system.**

In Ordering Paragraph 3 of D.83-05-052, the Commission directed:

The Company shall, within 30 days of the date of this order, contract with a licensed civil engineer to formulate a plan for plant improvement and proper progressive maintenance, as set forth in Finding 7. A copy of the engineering report shall be furnished to this Commission, Attention Hydraulic Branch, and to the Department of Health Services (DHS)<sup>21</sup>

In 1996, the Respondents were ordered to show cause why they should not be fined for failing to comply with orders in D.83-05-052. The Commission found the

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<sup>16</sup> See, Res. W-4207, 2000 Cal. PUC LEXIS 616 at \*6. Sometime in 1999 the Respondents temporarily hired James Pingree who was given only field management responsibilities and left in the summer of 2002. Since that time Mr. Pingree has worked only part-time for the Respondents and has a full time job at a nearby casino. At all times in question, Danny Conlin has been the system manager/operator.

<sup>17</sup> Findings and Recommendations Para. 5(g), *id.* at \*9.

<sup>18</sup> Findings and Recommendations Para. 2, *id.* at \*8.

<sup>19</sup> See, *Applic. of Conlin-Strawberry Water Co. Inc. for Rehg. of Res. W-4207; Petn. for Modification of Res. W-4207*, D. 00-11-043, 2000 Cal. PUC LEXIS 931 at \*5 (November 21, 2000).

<sup>20</sup> *Water Div. Rpt 2003* at pp. 8-16.

<sup>21</sup> D.83-05-052, 1983 Cal. PUC LEXIS 916 at \*36.

Respondents had not developed nor filed any engineering study as directed in 1983.<sup>22</sup>In 1999, the Commission fined the Respondents a total of \$10,000 for 20 violations of past Commission and Department of Health Services (DHS) orders.<sup>23</sup>

In 2000, the Respondents sent the Commission a two- page letter dated April 26, 2000 in response to Ordering Paragraph 3. In Res. W-4207, the Water Division found the letter contained no timelines to complete the proposed items, no current system map, and no correlation to General Order 103 or DHS compliance orders or guidelines. In Res. W-4207, Findings and Recommendations no. 5 at sub-item (h), the Commission re-ordered the Respondents to develop and file an engineering study as approved by the Commission.<sup>24</sup> According to the Water Division, as September 2003 the Respondents still have not developed or filed an engineering study in accordance with Ordering Paragraph 3 of Res. W.4207.<sup>25</sup>

**C. The December 2002 electrical energy outage.**

On or about December 16, 2002, high winds downed 14 to 17 power poles supplying electricity in the Respondents' service area. Because of this power outage, the Respondents' water pumps and water treatment plant stopped operating, and ratepayers either had no water or were provided unsafe drinking water. Power was not restored until December 21, 2002.

When ratepayers and DHS officials telephoned the Respondents on December 16, no answering machine or answering service was available. In D.83-05-052, the Commission had ordered that by June 18, 1983, the Respondents had to install such a device or hire an answering service for ratepayers.<sup>26</sup> The Respondents were unavailable by telephone or in person for a week after the outage began; failed to warn

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<sup>22</sup> D. 96-09-043, 1996 Cal. PUC LEXIS 910 at \*42 - \*46.

<sup>23</sup> See, Ordering Paras. 1 through 4, D. 99-11-044, 1999 Cal. PUC LEXIS 875 at \*32.

<sup>24</sup> See, Res. W-4207, 2000 Cal. PUC LEXIS 616 at \*4 - \*5 & \*9.

<sup>25</sup> Water Div. Rpt. 2003 at pp. 12-13.

<sup>26</sup> D.83-05-052, 1983 Cal. PUC LEXIS 916 at \*35 - \*36, Ordering Para. 2(c).

ratepayers to boil the unsafe drinking water resulting from the outage; and did not report the outage to the Commission<sup>27</sup>

**D. Audit issues from 1983 to 2003**

The Water Division's Audit Report, Exhibit 2, describes the following audit issues:

**1. Missing deposits to the SDWBL trust account.**

Ordering Paragraph 10 of D.83-05-052 requires the Respondents to deposit all SDWBL surcharges collected from ratepayers and upfront cash payments, into the SDWBL Trust Account that is managed by a fiscal agent approved by DWR. For the period from 1983 to 2003, Staff audits found that the Respondents had failed to deposit the \$103,268.58 (including accruable interest) of collected surcharges in the SDWBL Trust Account<sup>28</sup>. As of the date of this Order, the Respondents have still failed to repay this deficiency.

**2. Unauthorized and excessive management salary**

For the 17-year period from 1984 to 2001, the Commission authorized a salary for Danny Conlin totaling \$ 87,758.34. However, the Audit Report (Exhibit 2) indicates that for the same 17-year period, according to the company's annual report Danny Conlin paid himself a periodic salary that cumulatively totals approximately \$294,878.00. This exceeds the Commission authorized salary level by a total of \$ 207,119.66.<sup>29</sup> The source of these excessive salaries was either the SDWBL loans or the SDWBL surcharges collected from ratepayers.

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<sup>27</sup> See, *Water Div. Rpt 2003* at pp. 7-8.

<sup>28</sup> The total of \$103,268.58 consists of \$61,714.91 undeposited and \$41,553.67 of interest accruable on the undeposited amount.

<sup>29</sup> See, *Audit Rpt* at sec. IV, issue no. 2 ("Excessive Management Salary").



### **3. Denying Staff access to utility books and records**

The Respondents have denied Staff auditors access to company books and records. Thus far, neither the Respondents nor its hired accounting firm have responded to Staff data requests from early 2001. These data requests pertained to: 1) statements made during its 2000 informal general rate case meeting held in Sonora CA; and 2) to substantial unaccounted for changes in the company balance sheet statements. On Thursday, August 7, 2003, Staff phoned the Respondents to arrange a follow-up meeting to conclude the audit; the Respondents refused to allow the meeting to take place claiming harassment. Staff has received no return calls to their phone inquiries on August 25 and 26, 2003, to arrange for follow-up audits.

### **4. Improper accounting methods**

The Commission requires the Respondents to use accounting methods and procedures known as the Uniform System of Accounts (USOA), which require double entry accounting on an accrual basis. The Respondents have refused to comply with the USOA accounting methods since 1982. This has resulted in unreliable financial reports to the Commission. For example, a quarter of a million dollars of physical assets were added to the company books in 1982, but were subsequently deleted in 1997. The Respondents have made no proper accounting entries for either the 1982 or the 1997 events.

### **5. False accounting entries for water pumps**

For the period from 1993 through 1995, the Respondents claim to have purchased three, three - horse power water pumps as water company assets. Danny Conlin admitted to Staff that these pumps were unusable for CSWC. Instead, he rented a 10-horse power pump for water system purposes. The Respondents have refused to allow further Staff audits to verify how the Respondents have accounted for these pumps in the company's rate base.

**6.     Untariffed exemptions and claiming personal expenses as business operating expenses**

The Respondents can provide no records of receiving payments for water service provisioned to Danny Conlin's home; the Danny Conlin Logging Co.'s offices; cabins and swimming pool complexes; or other facilities owned or controlled by the Respondents or their affiliates. The company's tariffs provide no rate exemptions for these facilities. Further, the Respondents are improperly including individual personal expenses as business operating expenses.

**7.     Labor costs unaccounted for**

The Respondents claim that over \$113,000 in SDWBL funds were used to pay for system construction work during the years 1984 to 1987. The Conlin Excavation Co. (CEC), another business solely owned by Danny Conlin, is claimed to have performed this work. However, the Respondents cannot provide any payroll records documenting CEC employee costs for such construction work. The Respondents have refused to allow a follow-up field visit to complete the audit.

**8.     Undocumented contract work**

The Respondents allegedly hired several outside companies to perform system improvements and have submitted these work costs to DWR for reimbursement from SDWBL loan funds. However, the Respondents have been unable to document these costs, which approximately total \$9,629.42 for the years 1984 to 1987. The Respondents have refused to allow another field audit of these items.

**9.     Inaccurate claims for asset purchases**

During years 1984 to 1987, the Respondents purchased from Mountain Water System six items for system improvement projects. A discount in price was given to the Respondents for each purchase. The Respondents filed reimbursement claims under the

SDWBL program for the undiscounted amount of these purchases instead of the discounted amount that was actually paid. The total discounts came to about \$2,991.78.

#### **IV. DISCUSSION**

##### **A. Respondents' failure to timely comply with all commission orders warrants a receivership**

This proceeding implements Ordering Paragraph 3 of Res. W-4207 (as modified) which states:

Should the Water Division report that Conlin-Strawberry has failed to timely comply with all requirements of this Resolution, an Order to Show Cause why the Commission should not proceed to receivership pursuant to Public Utilities Code, section 855 shall issue.

As noted above, the Water Division reports that as of September 2003, the Respondents have not complied with two Commission orders as prescribed by Res. W-4207: (i) hiring a new system operator and/or manager, and (2) developing and filing with the Commission, an engineering study of system improvements. In this proceeding, the Water Division has requested that because of the Respondents' "intractable resistance" to these and other Commission orders, the Commission should after notice and hearing direct the Respondents to show cause why the Commission should not apply to the Superior Court for Tuolumne County for the appointment of a receiver to assume possession of the utility and its water system.

Since 1995, the Respondents have been on notice that receivership is a possible remedy to gain compliance with Commission order. The utility's ratepayers asked for a receiver in their 1995 complaint proceeding, C. 95-01-038, because of the Respondents' unresponsiveness to customers, inadequate management, and disregard of prior Commission orders.<sup>30</sup>

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<sup>30</sup> D. 96-09-043, 1996 Cal. PUC LEXIS 910 at \*2.

In D. 99-11-044, the Commission directed the General Counsel to proceed for a receivership if the Respondents failed to complete the ordered improvements by April 30, 2000. The Commission stated, “[s]hould Conlin-Strawberry continue its intractable resistance to Commission and/or DHS orders, we are prepared to reconsider the receivership solution.”<sup>31</sup>

**B. Additional and corroborative evidence of the need for a receiver**

The Water Division also has presented allegations of more recent violations. For example, the Respondents were unresponsive to the needs of ratepayers during the December 2002 electrical energy outage. The 2003 Water Division Audit Report raises serious issues regarding misappropriation of SDWBL loan funds and collected surcharges, as well noncompliance with Commission rules and regulations.

If the allegations of continuing and new violations presented in this proceeding are proven, these charges would show a pattern and practice that is so serious as to warrant placing the company in receivership and possibly imposing additional fines or penalties. Good cause exists to indicate that the Respondents have obdurately disregarded Commission orders, resolutions, and other rules and regulations, threaten the public health, and failing to adequately respond to ratepayers.

**IT IS ORDERED THAT:**

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<sup>31</sup> D. 99-11-044, 1999 Cal. PUC LEXIS 875 at \*2 & n.1. While the Commission opined in D. 00-11-043 that the issue of Danny Conlin's retention as manager was before the Commission in an informal general rate case review, those informal procedures did not resolve this issue.

1. An investigation on the Commission's own motion is instituted into the operations and practices of the Respondents: the Conlin-Strawberry Water Co. Inc., a water corporation, and Danny T. Conlin, the sole individual controlling and managing the company, CSWC, and its water system.

2. The Respondents are directed to show cause why the Commission should not petition the Tuolumne County Superior Court for the appointment of a receiver to assume possession and operation of CSWC and its water system pursuant to the California Public Utilities Code section 855.

3. The Respondents are further directed to show cause why an order imposing fines, penalties, or other remedies should not be issued for their continuous and/or new violations of Commission rules, regulations, resolutions, citations, or orders.

4. A hearing will be held as soon as practical after the assigned Administrative Law Judge (ALJ) convenes a Prehearing Conference pursuant to Rule 49 and calendars a date, time, and location for a hearing in a subsequent ruling or order. The ALJ will determine the findings of fact and conclusions of law regarding the following issues:

4.1. Are the Respondents unresponsive to the rules or orders of the Commission when they failed to timely comply by September 30, 2000, or at any time thereafter with all Commission orders as directed by Res. W-4207?

4.2. Are the Respondents unable or unwilling to adequately serve its ratepayers, when for example, for years they have

disregarded a Commission order to install an answering machine or provide an answering service for ratepayer's use?

- 4.3. Has the operator/owner, Danny T. Conlin, actually or effectively abandoned the utility, when for example, he misappropriates SDWBL loan monies for personal or other unallowed purposes other than system improvements, or fails to deposit surcharges into the SDWBL Trust Account for repayment of the SDWBL loans?
- 4.4. If proven do the allegations presented in this OII above at Section III, subsection D entitled "Audit issues," paragraph nos. (1) through (9) -- such as using SDWBL loan funds for illegal purposes; misappropriating SDWBL surcharges collected from ratepayers; false accounting of physical assets and revenues, etc. -- constitute additional violations of pertinent State statutes and Commission orders, resolutions, or other rules and regulations?
- 4.5. Have the Respondents -- after notice and hearing -- shown cause why the Commission should not petition the Tuolumne County Superior Court for appointment of a receiver to assume possession and operation of the Conlin-Strawberry Water Co. Inc. and its water system?
- 4.6. If sustained at hearing, do any of the violations alleged in this OII and/or Exhibits 1 or 2 hereof warrant fines, penalties, or other appropriate remedies?

5. This Order constitutes the Notice of Opportunity for Hearing pursuant to Section 855. Respondents shall appear at any scheduled hearing. On a date to be

established at the PHC, Respondents shall serve prepared testimony responding to the issues stated above and any other allegations presented in this OII and attached Exhibits 1 and 2. Should Respondents fail to appear, the allegations in this OII and Exhibits 1 and 2 will be deemed admitted, although the assigned ALJ may require additional evidence or information.

6. Within 30 days after the date of this Order, the Respondents shall submit a written report to the assigned ALJ, with a copy to the Director of the Water Division that contains the following information:

- 6.1. The date and amount of all SDWBL surcharges billed, collected, and deposited into the SDWBL Trust Account;
- 6.2. For each deposit into the SDWBL Trust Account state the following:
  - 6.2.1. The amount of the deposit that is comprised of surcharges collected from the ratepayers and the date of such collection; and
  - 6.2.2. The amount of the deposit that is the Respondents' repayment of surcharges that the Respondents failed to deposit.
- 6.3. The total amount of surcharges that was not deposited by the Respondents into the SDWBL Trust Fund and remains outstanding as of the date of this Order.

7. Respondents shall cease and desist from any and all violations of, and shall comply with, all Commission orders, rules or regulations (including General Orders) and any pertinent Public Utilities Code statutes, including the requirement that Respondents obtain the Commission's prior written approval before executing any agreement for the

sale, transfer, or encumbrance of any ownership interests of the utility or in its water system.

8. All applications submitted by Respondents after today and while this proceeding is open will be consolidated with this proceeding for consideration.

9. The Respondents and any agent, representative, employee, consultant, or other individual or person acting on behalf of the Respondents, shall cooperate with the Water Division Staff in accordance with Section 314 in providing access to the public utility's accounts, books, papers, and documents (whether in electronic or paper form), which the Respondents must preserve until further orders by the Commission.

10. This ordering paragraph suffices for the "preliminary scoping memo" required by Commission Rule 6(c) of the Commission's Rules of Practice and Procedure (Rule). This proceeding is categorized as an adjudicatory proceeding and will be set for evidentiary hearing. The issues of this proceeding are framed in the above order. A prehearing conference shall be scheduled for the purpose of setting a schedule for this proceeding, including dates for the exchange of additional written testimony, determining which of the Staff's witnesses will need to testify, and addressing discovery issues. As to categorization of this proceeding, this order is appealable pursuant to Rule 6.4. Any person filing a response to this Order Instituting Investigation, Notice with Opportunity to be Heard, and Order to Show Cause must state in any response any objections to such orders and notice regarding the need for hearings, issues to be considered, or proposed schedule. However, objections may not address factual allegations that an evidentiary hearing will decide.

11. The Executive Director will send by certified mail return receipt requested, a copy of this ORDER INSTITUTING INVESTIGATION, NOTICE OF OPPORTUNITY FOR HEARING, AND ORDER TO SHOW CAUSE to the Respondents at the following address:



Danny T. Conlin  
and the Conlin Strawberry Water Co. Inc.  
P O Box 116  
Strawberry CA 95375

and send by first class mail a courtesy copy of the same to

Bill Rugg,  
President of the Strawberry Property Owners Association,  
1753 Starview Dr  
San Leandro CA 94577

This order is effective as of the date shown below.

Dated October 16, 2003, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
CARL W. WOOD  
LORETTA M. LYNCH  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
Commissioners

Exhibit No.: One  
Commissioner: \_\_\_\_\_  
Administrative Law Judge: \_\_\_\_\_  
Witness: Herb Chow

## **STATUS OF REQUIRED SYSTEM IMPROVEMENTS**

### **FOR THE**

### **CONLIN STRAWBERRY WATER COMPANY VERIFICATION REPORT ORDERED BY**

### **RESOLUTION W-4207**

STATE OF CALIFORNIA  
Governor

GRAY DAVIS,

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**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



**Status of Required System Improvements for the  
Conlin Strawberry Water Company  
Verification Report Ordered By  
Resolution W-4207**

**INCLUDES  
10/03 FIELD  
INVESTIGATION**

**SUMMARY**

In Res. W-4207, signed July 20, 2000 the Commission ordered the Conlin Strawberry Water Company (CSWC) to make eight system improvements, two from the Commission and six from the Department of Health Services (DHS), by September 30, 2000. In addition, Res. W-4207 required the Director of the Water Division to file a "status of verification report" (Report) with the Commission within one month of the September 30 deadline. Finally, the Resolution provided if the required improvements were not made, the Commission's General Counsel would prepare for the Commission's review a petition pursuant to § 855 of the Public Utilities Code (P.U. Code) to be filed in the Superior Court of Tuolumne County seeking the appointment of a receiver to assume possession of the company.

This document is the required Report. The Report finds the required DHS items listed in the findings and recommendation of section of Res. W-4207 are complete but the CPUC items are not. In addition to the original two Commission compliance items not completed, the Report<sup>32</sup>, finds many Commission orders critical for system operation and at one time completed by CSWC, have fallen back into non-compliance. The company

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<sup>32</sup> First written in February of 2001; updated in July of 2003 and includes preliminary findings of

*Footnote continued on next page*

has placed itself in the limelight once more because the system was with little or no water for an entire week in December of 2002. Commission staff, customers, and the DHS could not reach the company during this time. The Commission requirement for a dedicated standby energy supply was once again out of compliance, causing the water outage.

The recommendation of the Report is to issue the Order to Show Cause (OSC) per OP No. 3 of Res. W-4207, as modified by Decision (D.) 00-11-043, which states the following:

“Should the Water Division report that Conlin-Strawberry has failed to timely comply with all requirements of this Resolution, an Order to Show Cause why the Commission should not proceed to receivership pursuant to Public Utilities Code, section 855 shall issue.”

CSWC's failure to comply with the Commission items listed in Res. W-4207: replace the current system manager and complete an engineering study; and revisionist behavior on other items critical for system operations requires the OSC and related Order Instituting Investigation (OII).

#### **PRELIMINARY RESULTS OF 9-22-03 FILED INVESTIGATION**

A field investigation of 9-22-03 revealed the lower Dymond storage tank three-quarters empty due to a leak apparently present for weeks if not months. The upper Dymond tank that directly supplies water to connections had severe leaks present for weeks if not months. Access to the upper Dymond storage tank required a half-mile walk on foot due to the service road obstructed by a fallen tree. A DHS staff member, Arnold Hatai, accompanied WD staff on this field investigation of 9-22-03. Mr. Hatai discovered in

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10/22/03 field investigation.

testing the turbidity instrument irregularities that indicated the machine was not working properly. The DHS staff member expressed concerns regarding management of the system which requires a Class II operator's license. The DHS currently lists Mr. Conlin, who holds such a license as the operator/manager of the system. However, the field investigation revealed that Mr. Conlin has been working full time in San Bernardino logging trees for the past 18 months and visits the Strawberry region only on weekends.

## **BACKGROUND**

The Commission issued Res. W-4207 as the seventh document concerning complaint case No. C.95-01-038. Submitted by the CSWC ratepayers' representative group, the Strawberry Property Owners Association (SPOA), C.95-01-038 requested the system manager and owner, Mr. Danny Conlin, be replaced due to egregious management behavior that, as discovered in a Commission mandated audit of the company's books, included tens of thousands of missing dollars from the State Drinking Water Bond Act (SDWBA) loan granted CSWC back in 1982.

The first decision on C.95-01-038 was an interim opinion, D.96-06-043. The decision required the case stay open until all items were completed.

In order to gain an understanding of the complaint case's history, listed below are the *eight* Decisions and Resolutions that have been a result of C.95-01-038, including the case CSWC filed in the Court of Appeal of the State of California (Fifth Appellate District):

### ♦ **D.96-09-043**

Interim opinion finding major problems with every major aspect of CSWC due to management. The company's failure to run a *safe* public utility was properly framed in D. 96-09-043:

Within 30 days after the effective date of this order, Conlin-Strawberry shall file a written response indicating why it should not be found to have failed to comply with past Commission decisions and fined pursuant to the Public Utilities (PU) Code:

1. Failure to comply with orders in Decision (D.) 83-05-052;

2. Failure to comply with Resolution W-3445;
3. Failure to comply with DHS orders in Citation No. 03-095;
4. Failure to comply with DHS orders in Citation No. 03-11-94C-135;
5. Failure to comply with DHS orders in Citation No. 03-11-940-010; and
6. Failure to comply with DHS orders in Citation No. 03-11-94C-205.

It also required the Commission staff to conduct an audit to include *but not limited to*:

7. Use of a 2.20% composite depreciation rate;
8. Establishment and maintaining a separate balancing account to record all billed surcharge revenue interest earned on deposits made to the fiscal agent;
9. Depositing within 30 days after collected all rate surcharge and up-front cash payment revenue collected with the fiscal agent approved by the DWR;
10. Establishment and maintaining a separate bank account for deposits and disbursements of Safe Drinking Water Bond Act loan construction funds advanced by DWR to CSWC;
11. Clear identification and support by written documentation for all transactions between CSWC and Conlin Logging Company;
12. The propriety of covering water company employees on the Workers' Compensation insurance policy of Conlin Logging Company;
13. Existence of contracts for employees hired from Conlin Logging Company; and
14. Verification of hours worked by all employees.

◆ **D.97-10-032**

Addressed both the petition for modification by SPOA and application for rehearing by CSWC of D.96-09-043. The Commission denied the petition for modification. The Commission also denied rehearing. However, it corrected the statutes under which penalties may be imposed for defendant's noncompliance with Commission orders and the statute of limitations for such noncompliance.

◆ **D.99-11-044**

Ordered \$10,000 in fines for noncompliance violations, required compliance verification report and associated resolution for Commission review with timetable for completion of previously ordered system improvements, and to address whether as required by 96-09-043 the company had hired a qualified system operator and/or manager. These fines have been paid in full and on time.

◆ **D.00-03-023**

Denied rehearing of D.99-11-044 due to insufficient grounds.

♦ **Res. W-4187**

Dated January 20, 2000, this is the compliance verification resolution as ordered per D. 99-11-044. Verifies two CPUC and four DHS items still not completed and included a timetable for completion of these remaining six non-compliance issues with a deadline of April 30, 2000. One of the two CPUC items: lack of an engineering study. While Ordering Paragraph (OP) 7 of D.99-11-044 required this resolution to address the issue of the company's lack of a qualified system manager, and was so mentioned in the background section of the resolution, it was not mentioned in the Ordering Paragraphs, thus still remained undetermined and an item still to be resolved.

♦ **Res. W-4207**

Dated July 20, 2000, the compliance verification resolution ordered in Res. W-4187. Water Division wrote the verification report finding two CPUC items still not completed: the engineering study and lack of a new system manager. All past DHS items were corrected, but six new DHS items had been sent to CSWC for compliance. A September 30, 2000 compliance deadline was set.

♦ **A.00-08-026 and A.00-08-028**

Danny Conlin filed a Petition for Rehearing and a Petition for Modification of W-4207, raising essentially the same arguments in the Application for Modification as he does in the Application for Rehearing. This action delayed the current verification report.

♦ **D.00-11-043**

This order found no reason for a rehearing or to modify W-4207 as requested because applicant (Danny Conlin of CSWC) raised no specific factual errors, but simply made general, conclusionary allegations unsupported by the facts. However, OP 3 was replaced with the following language:

“3. Should the Water Division report that Conlin-Strawberry has failed to timely comply with all requirements of this Resolution, an Order to Show Cause why the Commission should not proceed to receivership pursuant to Public Utilities Code, section 855 shall issue.”

♦ **F.035333**

On April 6, 2000 CSWC filed an appeal of D.99-11-044 and D.00-03-023 at the Fifth Appellate District Court of Appeal in Fresno, California naming the CPUC as respondent and SPOA as real party of interest. Petitioner, CSWC, claims the Commission itself cannot impose penalties directly without bringing action in Superior Court and requests that D.99-11-044 and D.00-03-023 be annulled. As of the Report's first writing in 2001 the case was still pending, causing delay of this Report. The Report update indicates the case was dismissed and not appealed by CSWC.<sup>33</sup>

The lack of timeliness of this Report is due in part to the company's appeal to the Appellate Court of the original decision requiring these verification reports. The appeal was denied, and the appeal period of the denial passed, marking the advent of this Report in February 2001. While management of WD changed later on in 2001, this Report apparently was never presented to the Commission. This updated version of the Report included the original information and describes the activities that have occurred since the Report's first rendition.

## **V. OUTSTANDING ORDERS FROM RES. W-4207**

- ***Remove Mr. Conlin off the payroll.*** The outstanding order to replace the individual CSWC employs to perform the system's manager duties requires the owner to replace himself, that is, remove himself from the payroll and earn only the rate of return on his investment, and forbid CSWC funds funneled to him out of rates allocated for labor.

This compliance item was first ordered in D. 96-09-043:

Within sixty (60) days after the effective date of this order, defendant, Conlin-Strawberry Water Company, shall hire a qualified system operator or manager who is qualified and willing to abide by prior Commission and DHS orders discussed in this decision. The Commission Staff must approve the new system operator or manager

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<sup>33</sup> Petition summarily denied by order, July 26, 2001.



selected. Within 15 days after the effective date of this order, defendant is ordered to consult with Commission Staff for guidelines to solicit a temporary manager/system operator. Defendant is ordered to cooperate with Commission Staff during this process and to submit to Commission Staff notice of the new hire within 15 days after the selection. Commission Staff may request further hearing immediately if this notice is not filed timely.

At the time of the 1996 decision, D. 96-09-043, Mr. Conlin was listed as the system operator, the system manager, and the system owner. It is obvious from reading D. 96-09-043 the new system manager or operator was to replace Mr. Conlin on the payroll. Instead of following the order and replacing the system manager/operator, Mr. Conlin chose to split the duties of the management into two positions of system operator and system manager. The company claims that by splitting up the role and adding one employee, labeled system operator, filled by Mr. James Pingree<sup>34</sup>, the order to replace Mr. Conlin was completed.

- ***Completion of engineering study.*** Below is the original language requiring the engineering study. Its genesis comes from D.83-05-052:

“Because of the overall condition of the system we will follow the staff’s recommendation that a plan to improve the system be submitted to the Commission within 90 days. Conlin stated that if rate relief is granted he would hire a civil engineer to formulate such a plan...The engineering report should include a reasonable program for pipe replacement. The report may recommend use of larger pipe where good engineering practice demands it. The engineering report should place emphasis on what should be done about poor pumping efficiency...the report should...include general guidelines for progressive maintenance of the system. Conlin’s testimony...was essentially that repairs were made when things broke or when there were leaks. This is inadequate.”

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<sup>34</sup> He left his full time employment at the CSWC in the summer of 2002.

Further indication the engineering report has not been completed is found in Res. W-4207:

“[S] taff has determined the [engineering report] *has not been satisfactorily completed*. (Findings of Fact No. 10 of D.99-11-044: Water Division staff is intimately familiar with past Commission and DHS’ orders to improve this system. This makes them uniquely qualified to assess whether improvements have been **satisfactorily completed**.) Received by the Commission on April 26, 2000, was a two-page letter sent to the Commission as compliance to [the engineering study]. The “report” is a “laundry list” not an engineering report. The submitted “report” has no timelines to complete proposed items and no correlation to the Commission’s General Order 103 or DHS compliance orders or guidelines...In discussing the “report” its author, registered Civil Engineer Frank Walters, stated the list was sent to him by CSWC and he rewrote the list under his letterhead.”

The DHS member analyzed the “report” submitted by the CSWC and he stated this “report” would be rejected by DHS and sent back to the company for revision in order to be accepted as an engineering report.

The two items for completion from the Res. W-4207 are not completed.

### **SYSTEM DESCRIPTION**

Located about 30 miles east of Sonora, Tuolumne County, in the area known as Strawberry with roughly nine square miles of service territory, this Class D water utility serves approximately 366 (122 metered and 244 flat rate) mainly residential connections for approximately 1,000 customers during the summer peak period. The area is inaccessible in the winter; hence, the connections are mainly for summer vacation homeowners.

### **DISCUSSION**

This document is the third in a series of compliance verification reports promulgated by the complaint filed on January 20, 1995 by the Strawberry Property Owners Association (SPOA) against CSWC, C.95-01-038.

The CSWC system has a very long history of troubles, complaints and non-compliance with both Commission orders and DHS citations. The Commission has been urging Mr. Conlin to correct many of these deficiencies, some first identified in its 1983 General Rate Case (GRC), Decision (D.) 83-05-052.

Under the operation of Mr. Pingree, a grade four operator, the short-term, day-to-day operation of the system became stable and drew a measure of approval from DHS, deemed operating in an optimal manner. Within six months of Mr. Pingree's departure as system operator,<sup>35</sup> CSWC experienced an energy outage (December of 2002) causing the system to have little or no water for an entire week. According the Commission regulations, outages such as this must be reported to the Commission (– yet another non-compliance item). The President of SPOA instead reported the outage. The non-compliance items discovered by the Water Division staff (WD or Staff) with the advent of this water outage were numerous.

The Report update shows in the year 2003 the past non-compliance items of an engineering report and a qualified and Commission approved system operator/manager are now accompanied by the following missing compliance items: a voicemail system, standby energy, adequate supervision<sup>36</sup> of the day-to-day operator with the required license, a production meter, reporting a major outage, missing funds from the company's SDWBA loan -- a record of noncompliance that appears go on in ad finitum. The serious issues listed here require the Commission to open an OII/OSC for receivership.

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<sup>35</sup> Returning the company back into violation of the Commission's order to replace the system operator/manager using even the terms the company has placed on this requirement.

<sup>36</sup> DHS indicates Mr. Conlin has a valid Grade 2 operator's license thus fulfilling per DHS regulations the need for a Class 2 operator to supervise the operations of the company. WD questions this as adequate. Mr. Conlin's other business, logging, takes him away from the water company for about 6 months per year. The fact the company could not be reached during a serious outage should indicate that adequate supervision is not present. Since DHS considers Mr. Conlin the supervisor of the CSWC, he has once again violated the 1996 order to find a system operator/manager.

The facts and issues discussed in this third report include items currently under consideration in the company's pending informal General Rate Case (IGRC). The pending IGRC, authorized by CSWC's draft advice letter on June 1, 1998 currently enjoys *interim* GRC rates, approved on April 22, 1999 by Resolution W-4144. The scope of issues to be determined within the final GRC resolution has grown in magnitude to *possibly* dispense of the some of the compliance issues first identified as far back as D.83-05-052. The language of the decisions and resolutions already issued in these two pending cases, the SPOA complaint and the informal GRC case, have caused a blurring of what items are to be decided in each of these cases. Therefore, this Report requires the inclusion of the informal GRC case to acquire a complete understanding of the Commission's dilemma in determining what issues will be finalized in each of these two cases or if the entire issues should be bundled into the OSC/OIL. For example, D.00-11-043, a decision denying a rehearing of the complaint case's most recent compliance resolution, W-4207, states in part:

*Mr. Conlin should not be heard to complain here for the first time that he is surprised that the Commission is considering his ouster as manager of the company.....Further, it should be pointed out that the issue of Mr. Conlin's retention as manager of the company is before the Commission in a related proceeding [GRC]...It appears that the highly contested issue of Mr. Conlin's management of the company may be settled in the General Rate Case proceeding {emphasis added})*

The following OP in D.99-11-044 must be addressed in the OSC/OIL:

5. The Commission's Water Division is directed to pursue resolution of the remaining compliance items and of the audit discrepancies raised in the *Audit Report in Compliance With Interim D.96-09-043 for Conlin-Strawberry Water Company, Inc.* submitted on September 4, 1997 in the context of the company's pending general rate case or in another formal proceeding to be instituted no later than one year from April 30, 2000 or one year after the effective date of the final general rate case decision, whichever date is later.

The above examples point out the fluidity of issues being tossed about from the complaint case to now *possibly* being decided in the informal GRC application.

Because CSWC did not submit to WD a formal GRC application, WD informed CSWC there is no requirement upon WD to implement any portion of the informal GRC request

## **VI. OUTSTANDING COMMISSION ORDER – REPLACE CURRENT SYSTEM MANAGER**

According to the 2001 comments of a staff member at the DHS, the system's safe operation and compliance with DHS orders was due to the Commission's requirement of a new system operator. The new system operator Mr. Pingree left in the summer of 2002 as a full time employ and within six months the system experienced a whole week without proper water delivery.

CSWC was first ordered to replace the current system manager, Danny Conlin, in D. 96-09-043, dated September 4, 1996. However, there is confusion regarding this order as discussed in D. 00-11-043:

“...Ordering Paragraph 2 of D.96-09-043 states, in part, ‘...Conlin...shall hire a qualified system operator or manager...’ and that D.99-11-044 states ‘Said resolution shall address whether, as required by D.96-09-043...the company has hired a qualified system operator or manager...’ Applicant alleges that the Resolution [W-4207] modified the above language by substituting ‘or’ with ‘and/or’. Not so, as Res. W-4207 directly addresses this issue:

*D.96-09-043 requires the company to hire BOTH a qualified Operations Manager and System Manager. Conclusions of Law No. 4 states: ‘ “Within 60 days after the effective date of this order Conlin-Strawberry should replace its current system manager with one who is qualified and willing to comply with past Commission and DHS orders. Commission staff should approve the selected system manager and/or operator....*

There is an obvious conflict between Conclusion of Law No. 4 and Ordering Paragraph 2 of D.96-09-043. The Water Branch relied on the language in the Conclusion in adopting the “and/or” language in the Resolution. However...Applicant has demonstrated no injury from this conflict...the Commission’s conclusion that Danny Conlin should be replaced was evident long before the issuance of the Resolution, and is unrelated to whether the Commission intended “or” or “and/or.” In D.96-09-043, the following language appears at the Summary at page 1:

“...[W]e find that defendant’s failures of compliance provide sufficient grounds to immediately replace Danny Conlin as the system manager and...Therefore, we issue an interim decision ordering the immediate replacement of the current system manager....”

Mr. Conlin should not be heard to complain here for the first time that he is surprised that the Commission is considering his ouster as manager of the company.

Mr. Conlin’s recent activities are puzzling. Under Mr. Conlin’s direction, the company requested at the State of California’s Appellate Court to annul both the most recent decision on this complaint case (D.99-11-044) and to annul the decision (D.00-03-023) denying a rehearing or desired modification of D.99-11-044. The company spent money at the Appellate Court level claiming the Commission had not the ability to assess fines against utilities, claiming only the Superior Court has this right.

If the Commission did not have the right to assess fines, many other jurisdictional utilities would have made this same argument long before a Class D water utility owner. What Branch finds disconcerting beyond the rationale issues is the time and money afforded by the system manager to pursue this case.

Undoubtedly, the “hat” Mr. Conlin wore when he approached the Appellate Court bench is his owner’s hat, but was it the “manager’s” time and salary paying for the all the legal fees and interaction with the hired attorneys (Gooden, MacBride, Squeri, Ritchie & Day,

LLP)? Between 1992 and 1999 inclusive, the amount of money paid out as manager's salary was more than \$66, 000 over and above the authorized salary.<sup>37</sup>

When the current system manager claims using missing State Drinking Water Bond Act (SDWBA) funds because there is no profit left to fix leaky tanks, replace fully depreciated pipe, engineer the installation of an automatic system to avert empty storage tanks and other issues like perennial low water pressure areas in the system, where is the time and money coming from to file appeals of Commission decisions at the Commission and in other courts of law?

Would it not be more prudent to pay back the missing SDWBA funds first discovered in a 1995 audit or fund the engineering study first ordered in 1983 that still has not been completed? Sadly, old compliance items have returned: no voicemail system or standby energy causing concern at the DHS. The WD received this email in January of 2003 from the DHS Engineer assigned to CSWC:

-----Original Message-----

From: Hatai, Arnold (DHS-) [mailto:AHatai@dhs.ca.gov]

Sent: Tuesday, January 07, 2003 8:15 AM

To: Kerrie Evans (E-mail)

Cc: Carlucci, Carl (DHS-DDWEM); Matts, Carol (DHS-DDWEM)

Subject: FW: Conlin Strawberry Update

Hi,

In response to your request I am forwarding our evaluation. We are considering an enforcement letter of some kind to address some issues, but we need to discuss it further since people have been off for the holidays. Carl is out of town til Wednesday the 8th if you have any further questions.

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<sup>37</sup> From the informal GRC hearing: ALJ WALKER: So ... he would sign a document saying he will take no more ... than the salary authorized in the resolution? Will you sign? MR. CONLIN: Yeah.

arnold

Receivership and thus replacement of the current system manager have numerous positive effects for the customers and the owner's profit margin by addressing the running of a solvent, profitably business instead of a focus on the constant and consistent protesting of Commission orders or disregarding DHS citations requiring increased reporting.

Receivership is the answer to solving the problems involving CSWC. The seven decisions and resolutions emanating from one complaint case are for a company with slightly more than 300 connections. This doesn't include the informal GRC case that has seen *interim* rates in place for nearly *two years* because the company has disagreed with the Water Division's analysis of the case to the point where an informal hearing as proscribed in D.92-03-093 was held in the service territory, complete with an ALJ and court reporter. And still, there is no informal GRC reconciliation between the company and Water Division. The use of an informal hearing in an informal GRC has occurred only once before since its inception in 1992 -- further evidence this company continues to expend Commission time and energy.

This case should either be converted to a Formal GRC due to no representation for the ratepayers at this informal hearing or bundled with the OSC/OII with SPOA as part of the case. The president of the SPOA, instrumental in the complaint case, was out of the country at the time of the hearing and has expressed a desire to participate. The public hearing for this informal GRC resulted in 40 people attending in Strawberry in the dead of winter, a huge turnout considering most of the people attending do not live in the town of Strawberry -- it is very difficult to access the area in the winter.



## **VII. OUTSTANDING COMMISSION ORDER – ENGINEERING STUDY COMPLETION**

The purpose of an engineering report as envisaged by the Commission is to formulate a *plan of action* for the company to execute in order to improve the system's current and future operation and maintenance programs and to prepare the company for the future in terms of growth and safety regulations.

In general, the engineering study will keep the company running as a vibrant and successful investor-owned utility serving the public and making a profit. A well run utility is more likely to ensure its compliance with both DHS and Commission rules and regulation well into the future thus preventing the Commission from revisiting this utility due to complaints filed by its customers. It is reasonable to ascertain many compliance issues identified over the past 18 years may have been avoided if this one issue had been properly addressed when first ordered.<sup>38</sup>

An engineering report would have revealed the following. During a compliance inspection in May 2000, the DHS staff member determined the Lower Dymond Tank could be removed from the system since its actual function is to act as a huge valve in the system. Such an observation allows for the types of innovations an engineering report would reveal.

Another example of an item likely requested in an engineering study would be compliance of yet another outstanding Commission order found in OP 4 of Resolution W-3445, CSWC's 1989 GRC:

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<sup>38</sup> "This preliminary step [engineers plan] is vital to the company's long-term interests, and to its customers. [See D.83-05-052, page 9]

*Conlin-Strawberry Water Company shall install a suitable measuring device to determine water production at its source of supply within one year of the effective date of this resolution...*

Such a device is critical to determine a water system's distribution leak rate and to date the company has not complied.

Another vital reason for the Engineering Report is the need to create an informational memory for the company. For example, both Frank Wallace the engineer originally approached to conduct the engineering study, and the DHS inspector noted there is no current system map. Mr. Walters complained that a 1997 request of Mr. Conlin to supply a current map of the system never materialized. Self-evident is the need to have a current system map locating all the components of the system in order to determine what needs to be replaced, removed or improved upon.

In order to facilitate the company's understanding that a purpose of the Engineering Report is to support fulfillment of its regulatory needs of both the CPUC and DHS, Branch suggests another component of the Engineering Report should be the following recommendations from the DHS:<sup>39</sup>

- The Lower Dymond Tank has had numerous repairs made to it and should probably be replaced or removed from service.
- The Upper Dymond Tank is filled manually, however, it could be automated through the use of a pressure switch, timer control, and interval relay.
- No formal tank cleaning, valve maintenance or system flushing programs are in effect.
- Very few system maps or records are maintained.
- No flow meter is provided on the influent line to the plant.

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<sup>39</sup> Some may be completed when this report becomes available for the company's perusal.

Branch recommends the company hire the appropriate engineering company to complete the engineering study deemed satisfactory to the Commission and then implement the results found in said study. Such company should be hired within 90 days of this resolution and the completed engineering study should have a time schedule for completion of the study's recommendations.

## **VIII. BASIS FOR BRANCH RECOMMENDATIONS**

Receivership will accomplish replacement of the current system manager which should address the day to day activities such as a reliable contact system, proper accounting procedures and engender completion of the ordered engineering study. There would be better fiscal management since the current system manager is responsible for around \$103,000 missing in SDWBA funds and interest not accounted for in any known system improvement and still not repaid, thus accruing more interest money also to be repaid. An employee of the company would be paid only what is authorized by the Commission and not doubled as is the case now.<sup>40</sup>,

The Commission could finally close complaint case now marching into its eighth year, by placing the system into receivership. The Commission should closely analyze the most likely results of leaving in place the current system manager and his ability to run the company in a continued safe nature, particularly in terms of the financial health of the company. The Commission should also determined what will result without the completion and implementation of an engineering report in terms of future possible outages or contamination and complaints to be filed here at the Commission.

If the Commission ignored past decisions ordering the replacement of Danny Conlin, another outage as experienced in December of 2002 could happen again. The WD staff,

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<sup>40</sup> Et.al.: ALJ WALKER: How do you respond to this business of Mr. Conlin paying himself far more than was authorized?

customers and DHS have all tried to contact the company to no avail during a crisis situation, no one in the office, no answering machine, just a phone that rings. The 1996 order to produce a different system operator is in non-compliance regardless of the reading of the order. According to DHS, the energy outage last December 2002 was corrected when Mr. Conlin produced a generator – was it rented, purchased, or borrowed from his other business? Why hasn't he hired another system operator? The labor now on the payroll has no certification except for Mr. Pingree who also works for two other systems now. The DHS does not consider Mr. Pingree as the system operator; rather it considers Mr. Conlin as the system operator because he has a Class 2 license, which DHS accepts as fulfillment of current law requiring system operators to be licensed.

Reasons to deny the receivership. First of all, the original order was five years ago; he is still there, the company is now running in a nearly satisfactory fashion according to DHS; and he has completed over a dozen of outstanding orders from both the Commission and DHS, (granted some of these took him up to 18 years to complete from first ordered). The \$10,000 fine assessed by the Commission that he protested in the Appellate Court has been paid in full and on time. His SDWBA loan payments have always been on time. It would appear those seven decisions and resolutions and numerous DHS citations have modified his behavior in a favorable fashion. With their "fingers crossed" the Commissioners could leave Mr. Conlin as the system manager praying his future actions would mirror that portion of his recent past activities, which have improved the system.

However, the outage of December 2002 should dispel any visions of Mr. Conlin capable of long-term proper management. The point here is Mr. Conlin's aggressive resistance to compliance is seen not only in his past behavior but the fines to deter future mismanagement have not succeeded.

"Conlin ... testified he would hire an engineer to formulate a plan to improve the system" {See D.83-05-052, page 6}

Not completed.

In D.96-09-043, the following language appears at the Summary at page 1:

“In addition, defendant has not complied with numerous past Commission and DHS orders. We have cautioned defendant several times that such noncompliance can have serious consequences. Indeed, this noncompliance contributed to a serious system outage in 1994, and we find that defendant’s failures of compliance provide sufficient grounds to immediately replace Danny Conlin as the system manager...”

In D. 00-11-043:

Mr. Conlin should not be heard to complain here for the first time that he is surprised that the Commission is considering his ouster as manager of the company.

Not completed.

- **Customer Complaints.** As long as 1983, Decision 83-05-052, required improvement of service including “Use of telephone answering device or answering service.” In 1994 the company was ordered per Res. W-3827 to “... investigate alternative back-up power supplies...” Despite these orders, the company continues to be poorly run based on the fact that the complaints continue to be received at the Commission.

On August 26, 2002, the Commission received from SPOA a letter addressed to President Loretta Lynch, regarding the still open issues from its 1995 Complaint case decisions/resolutions (replacement of Mr. Conlin, the SDWBA loan mismanagement, the lack of an engineering report). Accompanying this letter were 36 handwritten letters from the customers.

The outage of December 2002 was described in this January 7, 2003 email sent to SPOA president Bill Rugg:

Mr. SPOA President,

Hi Bill, I have addressed three Strawberry water concerns in this email. I just called the Strawberry Water Co. to change the billing address to my new home address in San Jose. I called both of the numbers: 965-4106 & 586-2415 and there was no answer or even a phone message recording system so I can leave my phone number. We had no water or electricity in Strawberry in December. You already know about it, I am sure. The Tanager Drive pavement was never replaced after the repair of the leaking water main that was in front of the Strawberry Fire Dept.

In January of 1995, the SPOA filed a complaint (C. 95-01-038) with the Commission. The gravamen of SPOA's complaint was appointment of a receiver to operate CSWC, alleging inadequate management and persistent noncompliance with prior Commission and Department of Health Services (DHS) orders. Interim Decision (D.) 96-09-043 granted the SPOA complaint in part but denied without prejudice the request to appoint a receiver.

Branch sees receivership as the best line of action for the Commission because it will:

- (1) honor the intent of past decisions in this complaint case,
- (2) remove a major obstacle for future compliance evident in past compliance,
- (3) remove Mr. Conlin from the payroll to stop his "double-dipping" into the O&M funds, which in turn will foster
- (4) repayment of missing funds to the ratepayers,
- (5) development and implementation of proper system improvements and
- (6) sends the right signal to other companies that complying with Commission orders is not to be rewarded but expected.

In the original proceeding, the source of this verification report, Case No. 95-01-038, the water customers of the utility requested a receiver be appointed to operate the company because of inadequate management and failure to comply with previous Commission decisions. (D.96-09-043, page 2, 68 Cal. P.U.C. 52.) The company therefore has had notice since 1995 the Commission was considering this action.

Branch does not suggest this line of action without a proposed receiver. Branch recommends approaching the local district Tuolumne Utility District (TUD). In the past

TUD has agreed to buy the utility from Mr. Conlin, with favorable conditions present. The TUD is the logical entity to purchase this small utility in an effort to create a regional water delivery system. While TUD has stated it will not be a partner in a condemnation procedure, receivership could be the first step to the sale of the utility and out of Commission jurisdiction. The water industry is changing in California making others companies possible for receivership if TUD does not wish to be named the receiver.<sup>41</sup>

1. The Commission's primarily concern regarding a public water utility is its adequate supply and safe delivery of potable water to its customers, which is accomplished by the successful long-term operation of a water utility.
2. Conlin Strawberry Water Company had at one time complied with all but two, albeit serious, of the listed items for verification in Resolution W-4207. Now the list of non-compliance items is growing – again: Remove Mr. Conlin from the payroll, complete an engineering study, obtain and put into operation a reliable company contact system, a dedicated standby energy system, one not available for his logging business, *dedicated to the water system*, repayment to the ratepayers of funds missing from the SDWBA loan, proper accounting methods. The outage of December 2002 should be the “last straw” and trigger the receivership first requested by the ratepayers in 1995.
3. The non-compliance items are serious and cannot not be ignored by either the Commission or the CSWC. Receivership should be implemented.
4. The Water Division should recognize Ordering Paragraph 5 of D. 99-11-044 has not been completed.

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<sup>41</sup> D.99-11-044, page 1, reflecting on the fact that the company had still not complied with previous orders, the Commission ...[provided] that the General Counsel should proceed for a receivership if Applicant failed to complete the ordered improvements by April 30, 2000.

**RECOMMENDATIONS**

Based upon the staff investigation and evaluation delineated above, recognizing that CSWC has still not complied with all Commission orders and in fact the list of non-compliance items is growing, the OII/OSC should be granted by the Commission.

MICHAEL R. PEEVEY

President

CARL W. WOOD

LORETTA M. LYNCH

GEOFFREY F. BROWN

SUSAN P. KENNEDY



Exhibit No.: Two  
Commissioner: \_\_\_\_\_  
Administrative Law Judge: \_\_\_\_\_  
Witness: Herb Chow

**Audit Report**  
  
**for**  
  
**Conlin Strawberry Water Company**  
  
**For the Years from 1984 to 2003**

**San Francisco, California**  
**18 September 2003**

**CONLIN STRAWBERRY WATER COMPANY****Audit Report****IX. Introduction**

An engineering investigation and a compliance audit were initiated independently and later joined when both ran into problems of non-compliance and non-cooperation. This petition is prepared by Public Utility Financial Examiner, Herb Chow, of the Audit and Compliance Branch in the Water Division of the California Public Utilities Commission.

**X. Purpose**

This petition recommends the Commission open an OII/OSC on Conlin Strawberry Water Company (CSWC) to remove the current management and ownership permanently and to restore integrity to the office and financial operations.

**XI. Scope**

Data and documentation will include customer ledgers, cash ledger, supporting schedules, and supporting documentations for CSWC from 1984 into 2003; it will include bank statements for the SDWBA trust account from 1984 into 2003; it will include statements and invoices for the SDWBA project from 1984 into 1988; cash ledgers, invoices, and supporting documentations for the logging company from 1984 into 1988; and it will include another relevant data.

**XII. Background**

In Decision No. 83-05-052, dated 18 May 1983, the Commission granted CSWC the authority to borrow from the Dept. of Water Resources under the SDWBA. In 1996 a

compliance audit was initiated by the . In 1997, Danny was informed of the deficiency in the trust account. The second audit was not completed for lack of cooperation, in spite of follow up requests in January and February of 2002. To bring the audit to a conclusion, the petition process for an OII began in April of 2002.

### **XIII. Issues**

1. Shortage to the Trust Account: Decision 83-05-052 authorized CSWC to borrow under SDWBA and provided a surcharge to pay off the Loan. Ordering Paragraph 10 directed CSWC to deposit all surcharges and upfront cash with a fiscal agent approved by the Dept. of Water Resources (DWR). CSWC has not complied even after two compliance audits. The deficit, through May 2003, has now increased to \$103,268.58. \$61,714.91 is the surcharge revenues collected but not deposited and \$41,553.67 is accruable interest on those revenues. (See Attachment 1)
2. Excessive Management Salary: From April 1984 through December 2001: The books show that each year Danny paid himself salaries two to five times the authorized management. (See Attachment 2, Column 5 vs. Column 9) For the entire period, the Commission authorized a total of \$87,758.34 in Management salaries. (See total for Column 5) During the same period, Danny paid himself \$289,700.00. (See total of Column 9) The annual reports for the same period show total management salaries of \$293,878. (See Attachment 2, Column 6) Any unauthorized management salary is personal withdrawal no matter how it is use. In this case, the personal withdrawals for Danny meant shortage for the trust account. But for the excessive withdrawals, CSWC would have had over three times the funds to make full deposits.  
( $\$289,700.00 - \$61,714.34 = \$201,941.66$ )

Danny set a level of salary for himself and never wavered except to increase it from time to time at his choosing and never decrease his salary once it is set.. He ignored his fiduciary responsibility to deposit all surcharge revenues in the trust account, and he disregarded the salary authorized by the Commission. (See Attachment 3) A comparison can be made of dates when the Commission authorized increases or decreases of management salary and when he gave himself increases but never decreases. (See Attachment 2, Column 4 - dates of authorized changes to Attachment 3 - dates he gave himself increases) This Comparison shows that Danny took whatever he wanted whenever defying Commission orders.

3. Refusing to Cooperate with Staff Audit: Danny was asked to respond to inquiries about his testimony at the Sonora informal hearing held on 28 August 2000. Follow ups were made in January and February of 2001. Staff received no answer. For the audit begun in 2001, the outside accountant would not respond to data requests about substantial changes on the balance sheet.

The audit to update the 2001 data was restarted on 30 June 2003, with three working days at the company's office. On Thursday, 7 August 2003, staff phoned Danny's office manager, Dolores, to arrange a follow-up audit to conclude the audit. She refused to allow a follow-up audit. Staff phoned again and she continued to refuse.

Staff phoned on 25 and 26 of August 2003, received no answer from the regular company phone nor from its emergency phone. Staff left message but got no call back.

When staff can not reach the office, it means ratepayers can not reach the office. This has happened during a power shortage.

4. Improper Accounting: Danny Conlin continues to reject the use of double entry method on the accrual basis as required by USofA. An outside accountant prepares financial statements at the end of the year but he does not audit the books, merely starts with whatever is handed to him. A quarter of a million was added to the books in 1982 and taken off in 1997. There is no documentation for either entry. A 100,000 gal. water tank was authorized in the 1983 decision; Danny built a 420,000 gal. water tank. The two prior audits discovered adjustments to rate base plant. They should be implemented.
5. Cost of Plant In Service: During a three year period from 1993 through 1995, the Respondents claimed the purchase cost of 3 pumps, each of which was 3-horse powers in strength. Danny Conlin admitted these pumps were not used nor useable for the water company. Instead, he would rent a 10-horse power pump to pump water from the river. The Respondents have refused to allow further Staff audits to verify accounting cost entries for the 3 pumps into the rate base of the company..
6. Operating Revenues and Expenses: For the years audited, the Respondents reported no water payments received for water service provided to Danny Conlin's home, the logging company's office, a ten cabin rental and swimming pool complex, and other facilities owned or controlled by to the Respondents or their affiliates. The company tariffs contain no exemptions for these facilities. Further the Respondents operating expenses appear to improperly include personal expenses of Danny Conlin or

company affiliates' expenses. Accelerated depreciation and investment tax credit (when available) have not been recognized on the annual reports.

7. Affiliate Labor Costs on the SDWBA Project: Danny Conlin filed claims for workers but has no records of paying any of them. CSWC records show withholding s for its office and field workers including Danny Conlin, but none for the construction workers. Vicki Carne claimed that the workers were the logging company's workers, but no Form 941's nor Form 1099's were available. Furthermore, Vicki Carne was not yet working for the water company, and Dolores Conlin refuses to allow a follow up field audit. The affiliate is Conlin Excavating Company. A bank account was opened for this affiliate company because DWR required this separate bank account to deposit the checks funding the project. Total affiliate labor cost claim came to over \$113,000.00 for years 1984 to 1987. Neither Conlin Excavating Company nor Conlin Strawberry Water Company issued checks to pay the workers for which claims were made. (See Attachment 4)
8. Claims for Contract Out Work: Danny Conlin contracted out a number of assignments to outside companies but there is no evidence of payment to them. On the other hand, claims were made for these companies and DWR made reimbursements to pay them. The total of these unaccounted for claims come to \$9,629.42 for years 1984 to 1987. The Respondents have has refused to allow a follow up field audit. (See Attachment 5)
9. Excessive Claims against DWR: During years 1984 to 1987 Danny Conlin made six purchases from Mountain Water System for the SDWBA project. He received a discount for each of these but he filed claims for the gross amount instead of the net amount that he actually paid. This is a blatant falsifying of claims for cost reimbursement. The total of these discounts came to \$2,991.78. (See Attachment 5)

Staff recommends the Commission open an OII on CSWC to remove Danny from management and ownership permanently and restore integrity to the financial and office operations.

**ATTACHMENT 1**  
**(available only on hard copy)**

**ATTACHMENT 2**  
**(available only on hard copy)**

**ATTACHMENT 3**  
**(available only on hard copy)**



**ATTACHMENT 4**  
**(available only on hard copy)**

**ATTACHMENT 5**  
**(available only on hard copy)**